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*Proposed Co-Lead Counsel for the Class
and Co-Counsel for Proposed Lead Plaintiff
the Public Pension Funds*

[Additional Counsel Appear on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANIK A. RIECKBORN, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

VELTI PLC, ALEX MOUKAS, WILSON
W. CHEUNG, and JEFFREY G. ROSS,

Defendants.

CLASS ACTION

Case No. 3:13-cv-03889-WHO

**REPLY MEMORANDUM OF THE
PUBLIC PENSION FUNDS TO THE
GLASSMAN GROUP'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN FURTHER
SUPPORT OF MOTION TO
CONSOLIDATE, TO APPOINT
VELTI INVESTOR GROUP AS
LEAD PLAINTIFF AND TO
APPROVE PROPOSED LEAD
PLAINTIFF'S SELECTION OF
COUNSEL; AND IN OPPOSITION
TO ALL COMPETING MOTIONS**

Date: November 27, 2013

Time: 9:00 a.m.

Dept.: Courtroom 2, 17th Floor

Judge: Honorable William H. Orrick

Complaint Filed: August 22, 2013

Caption Continued on Next Page

CHRIS VAFINIS, Individually and on
Behalf of All Other Persons Similarly
Situat

Plaintiff,

v.

VELTI PLC, ALEX MOUKAS, WILSON
W. CHEUNG, and JEFFREY G. ROSS,

Defendants.

Case No. 4:13-cv-03954-YGR

Date: December 10, 2013

Time: 2:00 p.m.

Dept.: Courtroom 5, 2nd Floor

Judge: Hon. Yvonne Gonzalez Rogers

Complaint Filed: August 26, 2013

HAN LEE, Individually and On Behalf Of
All Others Similarly Situated,

Plaintiff,

v.

VELTI PLC, ALEX MOUKAS, WILSON
W. CHEUNG, and JEFFREY G. ROSS,

Defendants.

Case No. 3:13-cv-04140-SI

Date: December 13, 2013

Time: 9:00 a.m.

Dept.: Courtroom 10, 19th Floor

Judge: Honorable Susan Illston

Complaint Filed: September 6, 2013

RAYMUND MANABAT, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

VELTI PLC, ALEX MOUKAS, WILSON
W. CHEUNG, JEFFREY G. ROSS,
WINNIE W. TSO, CHRIS KASKAVELIS,
DAVID W. MANN, DAVID C. HOBLEY,
JERRY GOLDSTEIN, NICHOLAS P.
NEGROPONTE, JEFFERIES &
COMPANY, INC., RBC CAPITAL
MARKETS, LLC, NEEDHAM &
COMPANY, LLC, CANACCORD
GENUITY INC., and THINKEQUITY LLC,

Defendants.

Case No. 3:13-cv-04606-JSC

Date: December 12, 2013

Time: 9:00 a.m.

Dept.: Courtroom F, 15th Floor

Magistrate Judge: Jacqueline Scott Corley

Complaint Filed: October 4, 2013

1 Lead Plaintiff movants the Public Pension Funds (an investor group comprised of St.
2 Paul Teachers' Retirement Fund Association, the Oklahoma Firefighters Pension and
3 Retirement System and the Newport News Employees' Retirement Fund) respectfully submit
4 this memorandum in reply to the Memorandum of Points and Authorities in further Support of
5 Motion to Consolidate, to Appoint Velti Investor Group as Lead Plaintiff and to Approve
6 Proposed Lead Plaintiff's Selection of Counsel; and in Opposition to All Competing Motions
7 (ECF No. 60) (the "Response") filed by lead plaintiff movants the Glassman Group (an investor
8 group comprised of Bruce Glassman, James Caudle, George Syllantavos, Edward O'Connor,
9 Leonard Doherty and Fedon John Capas).

10 **I. BACKGROUND**

11 On October 21, 2013, the Public Pension Funds filed a Motion to relate and consolidate
12 actions, to be appointed Lead Plaintiff and to have their counsel approved as Co-Lead Counsel
13 for the putative class in the above-captioned actions. ECF No. 27. Eight other motions were
14 filed that day, including one by Bobby Yadegar, an individual investor who alleged a loss in
15 excess of \$18 million based on transactions in Velti stock executed by accounts over which he
16 claims to exercise authority. ECF No. 44.

17 After carefully reviewing the competing motions, the Public Pension Funds
18 acknowledged that Mr. Yadegar appears to possess the "largest financial interest in the relief
19 sought by the class," and that he appears to meet the other requirements for appointment as lead
20 plaintiff under the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). 15 U.S.C.
21 § 78u-4(a)(3)(B)(iii)(I)(bb). Accordingly, on November 4, 2013, the Public Pension Funds filed
22 a Notice of Non-Opposition (ECF No. 59) to Mr. Yadegar's motion.

23 Also on November 4, the Glassman Group filed its Response. ECF No. 60. The
24 Response mischaracterized the Public Pension Funds as "in-and-out traders" whose claims are
25 atypical of class members and face unique defenses. *Id.* at 9.¹

26
27 ¹ Counsel for the Public Pension Funds are also perplexed by the Glassman Group's assertions
28 against Mr. Yadegar, most notably that movant Mr. Yadegar's trading was "cut off" or difficult
to understand. Response at 10-11. The Public Pension Funds had no difficulty verifying or
cross-checking Mr. Yadegar's trading.

1 The Public Pension Funds respectfully submit this Reply to correct the record and to
 2 reiterate that, if called upon to do so, they will fulfill the lead plaintiff requirements of the
 3 PSLRA, including those of adequacy and typicality under Rule 23 of the Federal Rules of Civil
 4 Procedure.

5 **II. ARGUMENT**

6 The Glassman Group's contention that the Public Pension Funds are atypical and subject
 7 to unique defenses because they are in-and-out traders who sold before the final partial
 8 disclosure is mistaken on two levels.

9 First, the Public Pension Funds are *not* "in-and-out" traders and, thus, do have standing
 10 to pursue the alleged claims. The term "in-and-out" trader refers to an investor that bought and
 11 sold its securities *prior to* a curative disclosure. *Brown v. China Integrated Energy, Inc.*,
 12 No. CV 11-02559 MMM (PLAx), 2011 U.S. Dist. LEXIS 151131, at *37 (C.D. Cal. Aug. 29,
 13 2011) ("An 'in and out' trader is one who bought *and sold* its securities prior to a curative
 14 disclosure.") (emphasis in original) (*citing In re Veritas Software Corp. Sec. Litig.*, 496 F.3d
 15 962, 966 (9th Cir. 2007)).

16 In this case, the complaints allege either three or four dates as those on which the market
 17 learned the truth about Velti: May 15, 2012, November 14, 2012, March 12, 2013 and
 18 August 21, 2013. *See, e.g.*, ECF No. 1 at ¶¶ 32-33, 39, 47; *see also* Class Action Complaint for
 19 Violations of the Federal Securities Laws, at ¶ 41, *Vafinis v. Velti, plc*, No. 13-cv-03954-YGF
 20 (N.D. Cal. Aug. 26, 2013), ECF No. 1 ("*Vafinis* Cmplt.") (also alleging a March 12, 2013
 21 curative disclosure). The company's stock price declined in response to each of these
 22 disclosures by \$2.88, \$2.27, \$0.71 and \$0.66 per share, respectively. ECF No. 1 at ¶¶ 34, 40,
 23 48; *Vafinis* Cmplt. at ¶ 42.

24 As evidenced by the trading records submitted in support of their motion, each of the
 25 Public Pension Funds purchased Velti common stock that they held through May 15, 2012,
 26 November 14, 2012 and, in St. Paul's case, through March 12, 2013, which were the first three
 27 disclosure dates and resulted in the largest stock drops. *See* ECF Nos. 29-5 (St. Paul Teachers'
 28 Retirement Fund Association: final sale on March 12, 2013), 29-6 (Oklahoma Firefighters

1 Pension and Retirement System: final sale on January 11, 2013), and 29-7 (Newport News
 2 Employees' Retirement Fund: final sale on November 15, 2012). Thus, the Public Pension
 3 Funds purchased shares that were inflated by defendants' alleged fraud and then sold those
 4 shares upon the revelation of the true facts, as did all prospective class members.

5 Because they held through multiple disclosure dates, there can be no dispute that the
 6 Public Pension Funds have suffered losses caused by the alleged fraud and, thus, have standing
 7 to pursue this case. *China Integrated Energy*, 2011 U.S. Dist. LEXIS, at *41 (“[L]oss causation
 8 can be established by partial market disclosures that cause the price of the stock to decline.”);
 9 accord *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005) (holding that defendant’s
 10 misrepresentation must be the proximate cause of plaintiff’s economic loss); and *c.f. In re*
 11 *Cornerstone Propane Partners, L.P.*, No. C 03-2522-MHP, 2006 U.S. Dist. LEXIS 25819, at
 12 *30 (N.D. Cal. May 3, 2006) (concluding that only “plaintiffs who sold their stock before . . .
 13 the first corrective disclosure occurred, did not suffer any loss causally related to defendants’
 14 alleged misrepresentations.”).

15 Second, the fact that the Public Pension Funds sold before the *final* partial disclosure
 16 does not render them atypical or subject to unique defenses. Since they did not sell their shares
 17 prior to the *first* revelation of the alleged false statements, the Public Pension Funds have the
 18 same interest as the rest of the investor class, i.e., in proving that defendants inflated the stock
 19 price during the Class Period, and would therefore be adequate lead plaintiffs. *See, e.g., In re*
 20 *Cornerstone*, 2006 U.S. Dist. LEXIS 25819, at *25 (certifying class to include investors who
 21 sold after first corrective disclosure but before end of class period) (*citing Dura*, 544 U.S. at
 22 342-43); *China Integrated Energy*, 2011 U.S. Dist. LEXIS 151131, at *39 (“The fact that
 23 subsequent disclosures occurred after [movant] no longer owned [the company’s] stock does not
 24 show that [movant] will be an inadequate lead plaintiff.”); *see also id.* at *42 (“Since [movant]
 25 sold its China Integrated shares after [the first curative disclosure] date, and after it had suffered
 26 significant losses as a result of the plummeting stock price, there is no indication it will be
 27 subject to unique defenses that do not apply to the class as a whole.”); *In re Gentiva Sec. Litig.*,
 28 281 F.R.D. 108, 116 (E.D.N.Y. 2012) (“[W]here a putative lead plaintiff sold all its shares after

a partial disclosure of misconduct by the defendant but before the final disclosure that led to the lawsuit, that putative lead plaintiff does not face the unique defense of having to show loss causation to the extent it cannot serve as lead plaintiff.”) (citation and quotation marks omitted).² Moreover, it is equally well-established that at the lead plaintiff stage the court should not – and cannot – engage in a factual, expert intensive analysis to determine which partial disclosures are actionable and which are not. *See, e.g., China Integrated Energy*, 2011 U.S. LEXIS 151131, at *24 (“A wide ranging analysis is not appropriate to determine whether the movant has made a *prima facie* showing that he satisfies the requirements of Rule 23, such an inquiry should be left for consideration on a motion for class certification.”) (citation and internal quotation marks omitted); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 263 (3d Cir. 2001) (“The initial inquiry . . . should be confined to determining whether the movant has made a *prima facie* showing of typicality and adequacy.”).³

III. CONCLUSION

The Public Pension Funds reiterate their non-opposition to the motion of Bobby Yadegar for appointment as lead plaintiff, as Mr. Yadegar appears to possess the largest financial interest

² The Glassman Group not only wrongly suggests that a large number of class members lack a valid claim, but also ignores the fact that one of the Group’s own members, George Syllantavos, himself sold all his Velti plc holdings prior to the last curative disclosure (final sale on March 19, 2013). Certification and Loss Analysis of George Syllantavos (ECF Nos. 45-1 at p. 27-28, 45-2 at p. 16), attached as Exhibits A & B to the Declaration of Reed R. Kathrein in Support of Velti Investor Groups’ Motion To Consolidate, To Appoint Themselves As Lead Plaintiffs and To Approve Proposed Lead Plaintiffs’ Selection of Counsel, filed on October 21, 2013, ECF No. 45.

³ The Glassman Group’s out of Circuit cases are inapposite both because they address questions of whether plaintiffs sustained their burden of proof on class certification to show loss causation and because they are factually distinct. In *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, the Second Circuit denied class certification because plaintiffs, who sold their shares months before *any* disclosure of the fraud, failed to proffer any facts to support their leakage theory of loss causation and, thus, failed to meet their burden on class certification. 574 F.3d 29, 40 (2d Cir. 2009) (“we conclude that Plaintiffs have not presented sufficient evidence to demonstrate that the in-and-out traders will even ‘conceivably’ be able to prove loss causation as a matter of law, and that they therefore should not have been included in the certified class”). Similarly, in *In re IMAX Sec. Litig.*, 272 F.R.D. 138, 148 (S.D.N.Y. 2010) the proposed class representative bought prior to the false statements alleged and the alleged corrective disclosures did not pertain to statements relevant at the time of purchase, creating a potential loss causation defense. Here, there is no question that the Public Pension Funds have alleged they purchased and sold Velti stock during the relevant time period and suffered losses as a result of the same corrective disclosures featured in every complaint.

1 in the relief sought by class. The Public Pension Funds also reiterate, however, that they possess
2 the second largest such interest among the competing movants and that they remain willing and
3 able to act as lead plaintiff should the Court deny Mr. Yadegar's motion.

4 DATED: November 12, 2013

BERMAN DEVALERIO

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18
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